

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 986 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and

MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

GUMANSINH K VAGHELA

Appearance:

Mr. S.R. Divetia. A.P.P. for appellant.

Mr. P.M.Raval for Mr. Harin P. Raval, advocate for respondent No.1.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.R.JAIN

Date of decision: 26/09/96

ORAL JUDGEMENT(Per Abichandani, J.)

This acquittal appeal is filed against the judgment and order dated 26.4.1984 passed by the learned Sessions Judge, Banaskantha at Palanpur, in Sessions Case No. 12

of 1984 to the extent that the accused No.1 has not been convicted under Section 302 of the Indian Penal Code and has been convicted only under Section 304-Part II of the Indian Penal Code.

The prosecution version is that on 3.11.1983 at about 4 P.M. while deceased Jaksi Sava was proceeding to fetch water, the accused No.1 came there giving abuses and on being asked by Jaksi why was he abusing, the accused No.1 gave him a knife blow on his chest on the left side which resulted in his death. The trial court, on the basis of the evidence of the eye witnesses, came to the conclusion that the accused No.1 had inflicted a knife blow on Jaksi which resulted in his death. The story of self-defence was negatived, but the trial Court held that there was no premeditation and the incident had occurred in the heat of passion upon sudden quarrel. The accused No.1 was, therefore, held guilty for the offence under Section 304 Part-II of the Indian Penal Code and sentenced to rigorous imprisonment for a period of five years. The accused No.2 was acquitted of all the charges and the acquittal appeal was summarily dismissed against him.

On going through the record we note that the accused No.1 admittedly had three injuries which are mentioned in the medical certificate issued by the medical officer of the Primary Health Centre, at Ex.28. The Medical Officer, Dr. Manubhai Manilal Panchal, who had issued the medical certificate has been examined at Ex.27. He has deposed that the accused No.1 was brought to him at 7.45 P.M. on 3.11.1983 and on examining him the following injuries were found:

1. C.L.W. on right parietal region 1"x1/6".
2. Wheel mark 2" x 1 1/2" on back 1 inch away from the mid-line red in colour, two in number.
3. Wheel-mark 3"x1 1/2" on right side of back oblique, red."

He said that these injuries were possible by a hard and blunt substance and were caused within 24 hours. It will be seen that within about four hours of the incident the accused No.1 was sent by the police to the medical officer and these injuries were noted on his person. A non-cognizable complaint was filed, which is at Ex.33, by the father of the accused No.1 in which it was alleged that he had come to know that his son, i.e., accused No.1, was beaten up in Unema locality and he was lying there. He had, therefore, rushed to that spot and had seen the accused No.1 lying on the ground. The defence

of the accused No.1 is reflected in his reply, Ex.47, in which it was stated that he had, on the Diwali day, gone to Unema locality to fetch labourers and at that place he had come across the deceased, Dhulaji, Hariji and others in a drunken state. They had asked for money from him under the guise of Diwali "boni" so that they could have their drinks. Since the accused No.1 refused to part with money, they gave him abuses and started beating him with sticks on his head and back. He, therefore, fell down and shouted for help. It is stated in the said reply that the deceased Jaksi was injured while the accused No.1 was acting in self-defence.

Prosecution has not come out with the case that these injuries were caused to the accused No.1 at any earlier occasion and that thereafter the accused No.1 had proceeded with the knife and caused injury to Jaksi. From the evidence on record it appears to us that these injuries were caused to the accused No.1 at the time of the incident around 4 P.M. The evidence on record shows that there was no enmity between the parties and in fact the father of the accused No.1 was engaging them as labourers. The incident seems to have occurred on a sudden spur of moment when the accused No.1 had gone to fetch labourers on the day of the incident and it appears that some altercations did take place between the deceased and the accused No.1. Even the complainant in her evidence stated that the accused No.1 was giving abuses and her father-in-law deceased Jaksi had questioned him about giving abuses. Therefore, there was altercation which suddenly took place between Jaksi and the accused No.1 and in that process the accused No.1 had given a knife blow to Jaksi and he himself was beaten up by stick which resulted in three injuries noted in the medical certificate, Ex.28. In our opinion, therefore, the case squarely falls under Exception 4 of Section 300 of Indian Penal Code in which it is laid down that culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. It may be noted that as per explanation to Exception 4 it is immaterial in such cases which party gives provocation or commits the first assault. Under these circumstances, it is not possible to hold that the accused No.1 committed the offence of murder punishable under Section 302 of the Indian Penal Code. The trial Court has rightly held him guilty for the offence of culpable homicide not amounting to murder and punished him under Section 304 Part-II of the Indian Penal Code. We, therefore, see no reason, whatsoever, to interfere in

the impugned judgment and order. The appeal is,
therefore, dismissed.